McKOOL SMITH

A PROFESSIONAL CORPORATION • ATTORNEYS

Glenn E. Janik
Direct Dial: (214) 978-4933
gjanik@mckoolsmith.com

300 Crescent Court, Suite 1500
Dallas, Texas 75201

Telephone: (214) 978-4000
Telecopier: (214) 978-4044

December 21, 2006

Via E-mail

Kevin Kudlac
Weil Gotshal & Manges LLP
8911 Capitol of Texas Highway
Suite 1350
Austin, Texas 78759

> **Re:** *Computer Acceleration Corporation v. Microsoft Corporation*; Civil Action No. 9-06-CV-140 RHC in the United States District Court for the Eastern District of Texas, Lufkin Division

Dear Mr. Kudlac:

Pursuant to the Court's November 3rd Scheduling Order, Microsoft was obligated to produce source code for the accused products by December 15, 2006. (Scheduling Order 6.) Computer Acceleration's Preliminary Infringement Contentions, served on Microsoft on November 1, 2006, identified two accused products: Microsoft Windows XP and Microsoft Windows Vista. (CAC P.R. 3-1 Discl. 1.) To date, Microsoft has yet to produce source code for Windows Vista.

Given the rapidly approaching claim construction deadlines, it is imperative that Microsoft comply with the Court's Scheduling Order and produce the Windows Vista source code in a timely manner. In order to expedite the production of this code, Computer Acceleration is willing to agree to an initial, limited production of the Windows Vista source code with the understanding that Microsoft will cooperate with Computer Acceleration, should it require additional, relevant portions of the code.

Based on Computer Acceleration's review of the Windows XP source code, it appears that a substantial portion of the Windows XP source code relevant to this lawsuit (*i.e.*, the Prefetch code) is located in two file directories: base\NTOS\cache (the cache management sub-directory) and admin\services\sched\service\daytona (the task scheduler/builds sub-directory). Computer Acceleration requests you produce the equivalent directories and sub-directories for Windows Vista (*i.e.*, the Superfetch code). Additionally, Computer Acceleration requests that you produce the Superfetch header file(s). In Windows XP, this file is located at public\internal\base\inc\prefetch.h. Computer Acceleration also requests that you produce the source code for all Windows Vista source files that interface with Superfetch and source code
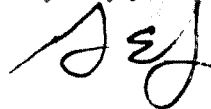
sufficient to identify the authors for all portions of the Superfetch source code and other relevant source code.

The request for the source code files listed above is based on the assumption that there is a similarity between the manner in which Prefetch exists within Windows XP and Superfetch exists within Windows Vista. Further, the specific Windows XP directories and file names are illustrative, and are not intended to limit Computer Acceleration's request for all Windows Vista source code that is relevant to this lawsuit. Microsoft is in a position to know which portions of the Windows Vista source code implicate Superfetch functionalities. If equivalent directories and sub-directories do not exist within Windows Vista, or if Microsoft does not wish to produce the relevant portions of the Windows Vista source code, Computer Acceleration requests that you comply with the Court's Scheduling Order and simply produce the entire Windows Vista source code.

Please evaluate Computer Acceleration's proposed compromise for the production of Windows Vista source code. If Microsoft is agreeable to the proposal, Computer Acceleration requests that you provide a date on or before Friday, December 22nd when the Windows Vista source code will be produced. In light of the Court's Scheduling Order and upcoming deadlines, this date should be no later than January 9, 2007. Alternatively, if Microsoft is unwilling to agree to Computer Acceleration's proposal, we request you inform us of such decision by close of business Friday, December 22nd so that Computer Acceleration can place this issue before the Court prior to the end of the year.

I appreciate your prompt response. Please call me if you have any questions.

Very truly yours,

Glenn E. Janik

GEJ/mlb